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Nos. 287, 288, 289, 290 and 316

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 287 Camille V. Treigle, vs. Acme Homestead Assn.,
Appellant. *Appellee.*

No. 288 Camille V. Treigle, vs. Thrift Homestead Assn.,
Appellant. *Appellee.*

No. 289 Treigle Sash Factory, Inc., vs. Conservative Homestead Assn.,
Appellant. *Appellee.*

No. 290 Treigle Sash Factory, Inc., vs. Union Homestead Assn.,
Appellant. *Appellee.*

No. 316 Joseph Mitchell, vs. Conservative Homestead Assn.,
Appellant. *Appellee.*

APPEALS FROM THE SUPREME COURT OF LOUISIANA

ORIGINAL BRIEF IN BEHALF OF APPELLANTS

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The Supreme Court of Louisiana considered all of these cases together, and handed down an extended opinion in the case of Treigle vs. Acme Homestead Association (No. 287 of these appeals) and in the other cases memorandum opinions only which referred to the opinion in the Acme case.

These opinions are officially reported as follows:

Number here	Title	Official Report
287,	Treigle vs. Acme Homestead Assn.,	181 Louisiana, page 941.
288,	Treigle vs. Thrift Homestead Ass'n.,	181 Louisiana, page 971.
289,	Treigle vs. Conservative Homestead Ass'n.,	181 Louisiana, page 972.
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APPEALS FROM THE SUPREME COURT OF LOUISIANA

ORIGINAL BRIEF IN BEHALF OF APPELLANTS

STATEMENT OF THE CASE

Appellants, owning shares of capital stock of the defendant Building & Loan Associations, applied to withdraw and be paid the value of such stock. (See petition, articles II

and VI, R. 1 and 2, and defendants' admission in answer, articles II and VI, R. 11 and 12.)

The by-laws of the Associations (R. 18) and the provisions of the Louisiana statute then in force and under which the stock had been issued, (Sec. 7 of Act 120 of 1902 as amended by Act 280 of 1916) provided that appellants' notices of withdrawal should be listed with other notices of withdrawal and paid in full in the order received upon reaching the top of the list; and that if not paid within sixty days, the Association must create a fund out of which to pay same by allocating to such fund not less than 50% of its net receipts. (The aforesaid by-law, and said section 7 of Act 120 of 1902 as amended by Act 280 of 1916 are reproduced in appendix hereto, pp. I *et seq.*)

More than sixty days after appellants had thus gone on the withdrawal list, and they not having been paid, Act 140 of 1932 of Louisiana was approved and became law. This statute, and particularly Sections 53, 54, 55 and 56 thereof, undertook to change completely and retroactively the payment of withdrawals by Building & Loan Associations. (These sections are reproduced in appendix hereto, pp. V, *et seq.*)

Appellants sued the Associations to enjoin them from applying, as to appellants, the provisions of said Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, on the ground that these sections impaired the contractual obligations of the Associations to pay appellants' withdrawals in full when they reached the top of the list, and to allocate a definite segment of receipts to pay such withdrawals in violation of Article 1, Section 10 of the Constitution of the United States; and that said sections of said Act furthermore deprived appellants of property without due process of law, in violation of Section 1 of Amendment XIV of the Constitution of the United States. (See petition R. 1 *et seq.*)

There was judgment in the State District Court declaring such sections repugnant to said provisions of the Constitution, and the Associations appealed to the Supreme Court of Louisiana, which reversed the District Court and decreed the said sections of the Louisiana statute constitutional, basing such decree upon its opinion that the sections in question were reasonable exercise of the police power. (R. 30, 31 *et seq.*)

The Louisiana Supreme Court denied a rehearing (R. 51), and appellants appealed to this Court.

The facts are not disputed, and the Supreme Court of Louisiana in its opinion (R. 31 *et seq.*) sets forth the case quite adequately, and concludes its summing up of the facts by saying (R. 38):

> "There is no doubt, however, that the Act of 1932 did prevent some of the many withdrawing shareholders in building and loan associations throughout the state from collecting the amount of their shares in full at the time when payment would have been made if this statute had not been adopted. We shall rest this decision, therefore, upon the proposition that the Act of 1932 did deprive the plaintiff of an advantage, and of a valuable right, which he enjoyed by virtue of having his name on the withdrawal list more than sixty days before the statute was adopted. The question, therefore, is whether the Legislature could deprive the plaintiff of the advantage and right which he enjoyed, without violating the constitutional limitation forbidding the passing of a law impairing the obligation of contracts, or divesting vested rights."

The Supreme Court of Louisiana based its decision largely, if not entirely, upon the proposition (R. 39 and 40):

> "From the fact—of which there is no dispute—that the business of building and loan associations is of a public character, or matter 'of public utility and advantage' and therefore subject to regulation and control by the Legislature in the exercise of the police power, it must follow that the authority of the Legislature in that respect cannot be frustrated or forestalled by the making of private contracts with building and loan associations. The reason is that the constitutional prohibition against legislation 'impairing the obligation of contracts' does not protect contracts which 'deal with a subject-matter which lies within the control of the Congress,' or the Legislature. It was so said by Chief Justice Hughes in the Gold Clause cases."

The several appeals present identical issues of fact and law, with differences only in names and amounts of stock involved.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED

Appellants, at the hearing of these causes, will urge the following assigned errors, being assignments numbered 3 to 10, respectively (Record pages 54 *et seq.*)

1. The Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana to be repugnant to Section 10 of Article I of the Constitution.

2. The Court erred in not holding said sections of said Act to be repugnant to Section 1 of Amendment XIV of the Constitution.

3. The Court erred in holding that Section 10 of Article I of the Constitution "does not protect contracts which

deal with a subject matter within the control of Congress or the Legislature."

4. The Court erred in holding that there is nothing unreasonable, arbitrary or discriminating in said sections of said Louisiana statute.

5. The Court erred in not holding that a shareholder in a Louisiana Building and Loan Association, who had given notice of withdrawal more than 60 days prior to the effective date of Act. No. 140 of 1932 of Louisiana, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, and of which vested right of property said shareholder is deprived by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The Court erred in not holding that a shareholder in a Louisiana Building and Loan Association, who had given notice of withdrawal more than 60 days prior to the effective date of Act No. 140 of 1932 of Louisiana has contractual obligations obliging the Association to pay him in full upon his reaching the top of the withdrawal list, and obliging it to allocate 50% of its net receipts to care for withdrawals, which contract obligations are impaired by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana in violation of Article I, Section 10 of the Constitution of the United States.

7. The Court erred in not holding Sections 53 and 56 of Act No. 140 of 1932 of Louisiana and each of said sections to be repugnant to the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several Boards of Directors of Building and Loan Associations the unregulated discretion to withhold

payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

8. The Court erred in not holding Sections 53, 54, 55 and 56 of Act. No. 140 of 1932 of Louisiana, and each of said sections to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the Police Power, and therefore, unconstitutional.

ARGUMENT

Summary

It is proposed to show the unconstitutionality of the statute in question by establishing the following propositions:

1. When the owner of shares in a Louisiana Building and Loan Association gave notice of his intention to withdraw, and more than sixty days had elapsed without his receiving payment, all prior to Act 140 of 1932, definite contract obligations and vested property rights existed, which were protected by Constitutional guarantee.

   For when a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement.

   Coombes vs. Getz, 285 U. S. 434.
   Ettor vs. Tacoma, 228 U. S., 148.
   Pacific Mail SS. Co. vs. Joliffe, 69 U. S. 450.
   Bedford vs. Eastern Building & Loan Assn., 181 U. S., 227.

2. By the provisions of Act 140 of 1932 the Louisiana Legislature has impaired the contract obligations of the Building and Loan Associations to appellants, and has taken appellants' property.

3. The police power is reserved to the State, and under it every business may be regulated for the public welfare, but only in a reasonable manner, and not arbitrarily or with discrimination.

While Courts may not pass on the wisdom of the legislation, yet they have full power and it is their duty to determine whether the exercise of the police power is reasonable.

Legislatures may not under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities.

Home Bldg. & Loan Ass'n. vs. Blaisdell, 290 U. S. 398.
Nebbia vs. New York, 291 U. S., 502.
Washington ex rel Seattle Title Trust Co. vs. Roberge, 278 U. S., 116.

4. The legislation in question bears no reasonable relation to the public welfare, and is unjust and discriminatory.

(a) The object sought to be attained by the Legislature is declared by the Supreme Court of Louisiana to be

"to benefit indiscriminately all members of such associations, and the general public, by saving these institutions from dissolution which they were menaced with, by the financial depression;" (R. 36) and "the object of saving the building and loan associations from liquidation and of reviving their busi-

ness, and of thereby benefiting all of the shareholders as a class and the public generally." (R. 45)

(b) The Louisiana Legislature declares the statute to be a permanent codification of law on the subject of Building and Loan Associations, (See Title to Act 140 of Louisiana Legislative Acts—Official Reports—1932, page 454.) and recognizes and affirms throughout the statute what is and has always been the genius of such associations, namely the right of shareholders therein to withdraw their investment.

(c) When the object sought by legislation is the saving of Building and Loan Associations from liquidation and reviving their business in behalf of the public welfare, there is no reasonable relationship between that object and provisions that instead of paying withdrawals in full as they reach the top of the withdrawal list, such withdrawals shall each be paid to the extent of 25% only as they respectively reach the top of the list, after which each goes to the foot of the list; because it is mathematically demonstrable that in any given time precisely the same amount of money will be paid out in either case.

(d) When the legislature recognizes that the right of shareholders in a Building and Loan Association to withdraw is consonant with the public welfare, prohibits payment of dividends to withdrawing shareholders, while permitting unlimited dividends in the discretion of the boards of directors to be paid to continuing members, and then delegates to boards of directors the power to prevent withdrawals indefinitely, there is unreasonableness and unconstitutionality.

Washington, ex rel Seattle Title Trust Co. vs. Roberge, 278 U. S., 116.
Eubank vs. Richmond, 226 U. S., 137.

(e) Legislation which delegates to private boards of directors of Building and Loan Associations the unlimited discretionary power to suspend the operation of laws unregulated by any prescribed norm or standard is unreasonable.

5. The legislation cannot be justified as emergency legislation, because not limited as to time or otherwise apposite to emergency relief.

Worthen vs. Thomas, 292 U. S., 426.
Home Building & Loan Ass'n. vs. Blaisdell, 290 U. S., 396.

Foreword

May it please the Court:

We desire preliminarily to make it clear that appellants' charges of unconstitutionality are directed at the legislation in question only as it affects appellants; and we do not suggest that the statute is invalid prospectively. Appellants insist only that as retroactively applied to appellants, who had given notice of intention to withdraw more than sixty days before Act 140 of 1932 was law, such legislation is invalid, unjust, discriminatory, arbitrary, unreasonable and unconstitutional.

We hasten to make clear that we are not concerned with every obligation of appellants' contract. We are concerned with those obligations only which arise after appellants gave notice of intention to withdraw. No other obligations are involved. We do not discuss and it is unnecessary to pass upon the constitutionality of Act 140 of 1932 as to a shareholder who had not given the withdrawal notice.

We proceed to a consideration of the constitutional questions involved.

I

These cases involve definite contract obligations and rights of property.

The Supreme Court of Louisiana has chosen to rest its decisions in these cases upon the proposition that the statute in question (Act 140 of the Louisiana laws of 1932) deprived appellants of valuable contract and property rights which they enjoyed by virtue of having their names on the withdrawal list more than sixty days before the statute was adopted.

The Supreme Court of Louisiana, moreover, prior to the adoption of the 1932 statute, declared the rights of a withdrawing shareholder under the prior statute of 1916.

In *State ex rel. Orlando vs. Reliance Homestead Ass'n.*, 174 La. 980; 142 So. 146, the Louisiana Supreme Court considered the rights of withdrawing shareholders and said:

> "Under section 7 of the act, as amended, (Act 280 of 1916), a member of the association may withdraw his shares of stock at any time by giving written notice of his intention to do so and provision is made for the payment of the amount due him. In case the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands, within a specified time, then one-half its receipts shall thereafter be set aside and applied to the liquidation of such demands.
>
> "The provisions of the act for the payment of such claims are mandatory. If the association has on hand funds out of which such claims may be paid under the law, it is the plain duty of the board of directors to make provisions for their payment,

and in case it refuses to do so, mandamus proceedings will lie to compel the performance of that duty.

> **"By giving to shareholders the right to withdraw their shares and by prescribing the method by which funds are to be made available for the payment of their claims when their applications to withdraw are filed, the lawmaker gave to them a privilege which cannot be denied them."**

In *Bedford vs. Eastern Building & Loan Ass'n.*, 181 U. S., 227, this Court had occasion some years since to pass upon whether a share of stock in a Building and Loan Association, together with the Association's by-laws and the notice in accordance therewith by the shareholder of his application for a loan constitute a contract. The notice by the shareholder in the instant cases being of intention to withdraw the amount of the shares instead of to obtain a loan, in no wise alters the principles involved.

This Court held that the share of stock in a Building and Loan Association, and the by-laws thereof, together with the giving by the shareholder of the notice of application for a loan to which, under the by-laws, the shareholder was entitled, constitute a contract, the obligation of which could not be impaired by subsequent legislation under the guise of the police power.

In the language of the Court:

> "The question is, Did the subscription to the stock of the association, its issuance, and the application for a loan in pursuance of it, constitute a contract which was inviolable by the state legislature? We think the answer should be in the affirmative. By his subscription to stock of the association Bedford became a member of the association, bound to the performance of what its by-laws and charter

> required of him, and entitled to exact the performance of what the by-laws and charter required of the association. Each acquired a right to what the other promised, and there were all the elements of a contract."

The analogy is striking. In the Bedford case the by-laws forming part of the certificate provided the holder was entitled to a loan upon making application; in the instant case, the certificate and by-laws forming part of the certificate and the law in force at the time stipulate that the holder shall be entitled to withdraw his money in full under definite conditions by giving notice of such intention. This Court has declared the one to be a contract, protected by the Constitution against impairment. What of the other? Is it not likewise a contract?

The pleadings in these cases, to which specific reference was made in the statement of the case, show the following admitted facts:

1. That appellants owned full paid withdrawable shares in the defendant associations.

2. That more than sixty days prior to the effective date of Act 140 of 1932 appellants gave notice to the associations of intention to withdraw as such shareholders.

3. That appellants were not paid.

The by-laws of the defendant associations provided that shareholders could withdraw at any time by giving notice to that effect, whereupon the notice would be registered in the order received, and paid in the same order. The by-laws stipulated that the withdrawing shareholder should be paid the face value of the stock together with all unwithdrawn declared dividends, less proportionate share of loss-

es, if any. (The by-laws in these several cases are alike for all practical purposes.)

The Louisiana statute (Act 280 of 1916) in force when appellants acquired their stock, when they gave notice of withdrawal and which was repealed by Act 140 of 1932, provided the same withdrawal rights and privileges as the by-laws, and provided further:

> "Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid."

These provisions of the Act of 1916 entered into and formed part of appellants' contracts.

> "The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form part of it. This embraces those laws alike which affect its validity, construction, discharge and enforcement."
>
> *Walker vs. Whitehead,* 16 Wall. 314; 21 L. Ed. 357.
>
> *Edwards vs. Kearzey,* 96 U. S. 595; 24 L. Ed. 793.

> "The obligation of a contract is 'the law which binds the parties to perform their agreement.' *Sturges vs. Crowninshield,* 4 Wheat. 122, 197, 4 L. Ed. 529, 549, *Story, op. cit.,* 1378. This Court has said that 'the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incor-

> porated in its terms. This principle embraces alike those which affect its validity, construction, discharge and enforcement. . . . Nothing can be more material to the obligation than the means of enforcement. . . . The idea of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion'."
>
> *Home Building & Loan Ass'n. vs. Blaisdell,* 290 U. S. 398; 78 L. Ed. 413.

We are not dealing, however, with a mere legislative gratuity or privilege conferred by Sec. 7 of Act 280 of 1916. We are dealing with a contractual relation existing between the corporation and the member, the law existing at the time of contract being an integral part of it.

Again, we do not deal with a mere shareholder of a Building & Loan Association who acquired his shares prior to the effective date of Act 140 of 1932. We must recognize that Appellants acted under the law of 1916, exercised the rights granted them by the by-laws and statute law; that appellants gave the legal and contractual notice of intention to withdraw as shareholders. There remained nothing further for them to do. Their rights had vested and had become fixed prior to Act 140 of 1932.

Appellants, upon the giving of the notice of intention to withdraw became vested in a property right—a cause of action. It did not arise upon the constitutional rule of law, but upon the contractual liability created under and in pursuance of the statute then in force.

Coombes vs. Getz, 285 U. S. 434; 76 L. Ed. 866.
Ettor vs. Tacoma, 288 U. S. 148; 57 L. Ed. 773.
Pacific Mail SS. Co. vs. Joliffe, 69 U. S. 540 (2 Wall.)

In the case of *Ettor vs. Tacoma,* the State of Washington had by statute imposed a liability on municipal corporations in favor of property owners sustaining consequential damages to their property as a result of street paving operations. While the statute was in force, suit was brought to recover damages inflicted upon an abutting property in consequence of street grading, done by direction of the City of Tacoma. While the suit was being heard, the statute creating the liability was repealed, and the trial Court directed a verdict in favor of the City, on the theory that the right of action was statutory, and fell with the statute, there being no saving clause. This judgment was affirmed by the State Supreme Court, but on writ of error to the United States Supreme Court, it was reversed, the Court saying:

> "The necessary effect of the repealing Act, as construed and applied by the Court below, was to deprive the plaintiffs in error of any remedy to enforce the fixed liability of the City to make compensation. This was to deprive the plaintiffs in error of a right which had vested before the repealing act,—a right which was in every sense a property right. Nothing remained to be done to complete the plaintiffs' right to compensation except the ascertainment of the amount of damage to their property. The right of the plaintiffs in error was fixed by the law in force when their property was damaged for public purposes, and the right so vested cannot be defeated by subsequent legislation."

In the case of *Coombes vs. Getz, supra,* there was presented a controversy wherein a creditor had brought suit against a director of a corporation, claiming liability by the director for a bill of goods which the creditor had sold to the corporation on open account. At the time the bill of goods was sold, there was a constitutional provision

in force in the State of California, which made directors of corporations liable in the event of a failure to pay corporate indebtedness by virtue of an embezzlement of corporate funds. In this case, the Supreme Court of California held, that the director was not liable, because the constitutional provision creating the liability had been repealed, before the suit of the creditor against the director was reduced to judgment. The United States Supreme Court held, however, that the directors, in taking their oath of office, impliedly accepted the obligations imposed by the constitutional provision of the California Constitution; and since the merchandise had been sold to the corporation while this rule of law was in full force and effect, a contract right in the provision of law was created, which it was incompetent for the State to repeal, and thus to impair the obligation of the creditor's contract.

In each of the two cases just cited, it was contended that the obligation claimed to have been impaired by the subsequent legislation was an obligation imposed by statute merely and subject to legislative repeal, and was not a contractual obligation.

Mr. Justice Sutherland in *Coombes vs. Getz, supra,* thus disposes of this contention:

> "The right of this petitioner to enforce respondent's liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was not purely statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. **Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the pre-**

viously vested right of the creditor, which in every sense was a property right."

This Court in *Pacific Mail S.S. Co. vs. Joliffe,* 69 U. S. 450 (2 Wall) expressed the same thought in these words:

> "The claim of the plaintiff below for half-pilotage fee, resting upon a transaction regarded by the law as a quasi contract, there is no just ground for the position that it fell with the repeal of the statute under which the transaction was had. When a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement. It has become a vested right which stands independent of the statute. And such is the position of the claim of the plaintiff below in the present action; the pilotage services had been tendered by him, his claim to the compensation prescribed by the statute was then perfect, and the liability of the master or owner of the vessel had become fixed."

And it is so in cases at bar. The by-laws of the Association and the Louisiana statute then in force provided very definitely that the shareholder could withdraw his investment by giving notice, whereupon certain and definite quasi contractual obligations and property rights accrued and became fixed and vested, and there was nothing remaining to be done by the withdrawing shareholder.

We submit, therefore, that not only did the Supreme Court of Louisiana rest its decision in these cases upon the proposition that contract obligations and property rights were involved, but analysis shows this proposition to be sound, that such contractual or quasi contractual obligations and property rights in fact existed.

What Obligations and Property Rights Existed?

We are not concerned with every obligation of appellants' contracts. We are concerned with those obligations only which arise after appellants gave notice of intention to withdraw. No other obligations are involved. We do not discuss and it is unnecessary to pass upon the constitutionality of Act 140 of 1932 as to a shareholder who had not given the withdrawal notice.

The contract gave or permitted, let us say, the shareholder an option to withdraw. When he exercised the option, he had done everything the contract required of him; his rights had become fixed and absolutely vested. He had paid a valuable consideration for the exercise of this option. The withdrawing member gave up all future dividends or right to participate in future earnings; and this was the price he paid for exercising his option to withdraw. (See by-laws.)

Let us see what were the obligations of the contract and property rights after notice of withdrawal had been given.

1. The withdrawal value of the member's shares became fixed. The Association became obligated to pay him par plus unwithdrawn dividends less his proportion of losses accrued or contingent to time of notice of withdrawal.

2. Such withdrawal notice was listed with other withdrawal notices in the same order as received by the Association, and the Association became obligated to pay the same in that order.

3. When the withdrawing member reached the top of the withdrawal list the Association became obligated to pay him the withdrawal value of his shares before any other member should be paid. That is, the relative rights of members *inter sesse* were fixed.

4. When the ordinary allocations to withdrawals was insufficient to liquidate all of them within sixty days from date of notice, the Association became obligated to allocate to withdrawals 50% of net receipts, which obligation could be judicially enforced by the withdrawing member.

All of the rights we have enumerated are things the Association was obligated to do. These are true obligations and not mere remedies which do not affect substantially the obligation; and at the risk of tautology we quote the United States Supreme Court in the case of *Von Hoffman vs. Quincy*, 71 U. S. 535, 4 Wall. 535, 18 L. Ed. 403 at page 409.

> "It cannot be doubted, either upon principle or authority, that each of such laws passed by a State would impair the obligation of the contract, and the last mentioned not less than the first. Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligations to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of the contract 'is the law which binds the parties to perform their agreement.' *Sturges vs. Crowninshield*, 4 Wheat. 122. The prohibition has no reference to the degree of impairment. The largest and least are alike forbidden. In *Green vs. Biddle*, 8 Wheat. 84, it was said: 'The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. Any deviation from its terms

by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation. Upon this principle it is that if a creditor agree with his debtor to postpone the day of payment, or in any other way to change the terms of the contract, without the consent of the surety, the latter is discharged, although the change was for his advantage'."

II.

Does Act 140 of 1932 of Louisiana impair the contract obligation and take the property to which appellants were entitled?

Appellants denounce as unconstitutional Sections 53, 54, 55 and 56 of the Louisiana Statute 140 of 1932, and we have reproduced these sections in appendix V, *et seq.* The Supreme Court of Louisiana in its opinion admits that appellant was deprived of an advantage and of a valuable right which he enjoyed.

Let us, however, advert to the said Sections 53, 54, 55 and 56 to discover if and to what extent obligations have been impaired and property taken by these sections.

Contract Obligations.

Section 53: This section permits of an infringement, upon one-half of net receipts, formerly required to be allocated to withdrawing shareholders, by the provisions of the 1916 Act, by providing that before any allocation of receipts is made to pay withdrawals, cash reserves may be created from which to declare dividends. Inasmuch as section 56 provides that such dividends may be in such amounts and at such rates as may be considered proper by the board of

directors, it is evident that the obligation to allocate 50% of net receipts to withdrawals may be very seriously impaired by this Section in the setting up of cash reserves to meet indefinite dividend requirements.

It is to be noticed as of importance here that the Act of 1932 guarantees none of these dividends to a withdrawing member; but to the contrary, section 53 and other sections provide that as to him, dividends cease as of the time of his notice of withdrawal.

Section 54 destroys one of the most essential obligations under consideration. No longer is the Association obligated to pay the withdrawing member the withdrawal value of his shares upon his reaching the top of the list. The obligation has been impaired so that it becomes an obligation to pay 25% of such withdrawal value; whereupon such member goes to the foot of the withdrawal list, to again await *finding his way to the top of the list* (as the Statute puts it) when he may again be paid 25% and so on, until perhaps in some far off day he may receive what it was the Association's contract obligation to pay him at first.

Moreover, and as important, the obligation of the Association to pay the withdrawing member who reached the top of the withdrawal list the amount of the withdrawal value of his shares before the Association paid any other members, is totally destroyed under section 54. Under this section, members who apply for withdrawal long subsequent to a member who has reached the top of the list are acorded equal rank in the "stagger system" as we shall term it, of withdrawals set up by this section,—and this in addition to the fact that such members may have already received a large percentage of their investment in the shape of dividends paid to them as continuing members while the first

withdrawing member was denied any dividends as the penalty of his asking to withdraw.

Section 55 undertakes to deny to withdrawing shareholders access to the Courts for any cause of action not accruing under Act 140 of 1932.

We do not conceive any possible justification for such an enactment; and the fact that the defendants did not seek to divest the Courts of jurisdiction herein is ample proof that not even they think such an enactment constitutional.

Section 56 abolishes every obligation on the part of the Association to create any fund from which any withdrawals may be paid. Not only is the obligation to allocate 50% of net receipts to withdrawals completely abrogated; but it is provided:

> "Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares."

This section further provides that despite a withdrawal list 25% of gross receipts may be used to make new loans.

This section permits the declaration of dividends to continuing members, unlimited either as to amount or rate, despite the existence of a withdrawal list.

This section wipes out every vestige of obligation of the Association toward its withdrawing members which existed and was vested before Act 140 of 1932 became law.

This section delegates to the Boards of Directors of the various and sundry Building and Loan Associations the absolute power to enrich themselves as continuing members at the expense of the withdrawing member who prior to the enactment of the section paid valuably for the option to become a withdrawing member, and to bring into full existence those obligations of the Charter and By-Laws of his Association and the statute law then in force which we have enumerated.

This statute emasculates the contract; it impairs every obligation in question; it divests every property right we have declared upon; it does do so without any condition and without offering any compensation.

As to the appellants in these cases, who prior to the effective date thereof, had exercised their privilege and thereby fixed the obligations of the Association toward themselves as withdrawing members, whose rights had become vested; —as to the appellants, such legislation clearly impairs contract obligations in violation of Section 10 of Article I of the Constitution of the United States.

Property Rights.

The contentions advanced by appellants with respect to the "due process" clause of the Constitution arise out of the permissive and obligatory provisions to be found in sections 53 to 56 of the 1932 Act, and are these:

1. That these sections accord to the board of directors of the defendant corporations an unregulated discretion in

the accumulation of funds to be set aside and applied toward the discharge of withdrawal applications, thereby subjecting the appellants' property or investment in the defendant Associations and its recovery to a control and power never sanctioned or consented to by appellants; and that this control and power, if extended to the extreme possibilities permitted by the statute, would make it impossible ever to recover the monies invested in the defendant Association.

2. That, as of the effective date of Act 140 of 1932, appellants were possessed of a "property right" and a vested cause of action" to enforce by mandatory process the obligations imposed by the provisions of Section 7 or Act 280 of 1916 on the defendant Homesteads; that such "property rights" and "vested causes of action" were acquired for a valuable consideration and which consisted in the surender of any and all right to future participation in either the profits being made by the Association in part from the use of appellants' own monies, or in the management and control of the corporate enterprise, in which latter, as withdrawing shareholders, appellants had no voice.

3. That the complete abrogation of this "property right," "vested cause of action" (which ever it may variously be called) by the provisions of these sections of the 1932 statute, constitutes "a taking," whether for a "public purpose" or a "private benefit," and in either case violates the provisions of XIV Amendment of the Federal Constitution.

To constitute "a taking" of property, within the meaning of the 14th Amendment of the Federal Constitution, it is unnecessary that there be an out and out appropriation of the physical property.

In *Chicago, R. I. & P. R. Co. v. United States,* 284 U. S. 80, 96, 76 L. Ed. 177, 186, the Supreme Court said:

> "Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title. *Chicago, M. & St. P. R. Co. v. Minnesota,* 134 U. S. 418, 458, 33 L. Ed. 970, 981, 3 Inters. Com. Rep. 209, 10 S. Ct. 462, 702; *Reagan v. Farmers' Loan & T. Co.,* 154 U. S. 362, 410, 412, 38 L. Ed. 1014, 1027, 1028, 4 Inters. Com. Rep. 560, 14 S. Ct. 1047; *Chicago, M. & St. P. R. Co. v. Wisconsin,* 238 U. S. 491, 498, 499, 59 L. ed. 1423, 1429, 1430, L. R. A. 1916A, 1133, P. U. R. 1915 D, 706, 35 S. Ct. 869. **The use of railroad property is subject to public regulation, but a regulation which is so arbitrary and unreasonable as to become an infringement upon the right of ownership constitutes a violation of the due process of law clause of the 5th Amendment.** *Atlantic Coast Line R. Co. v. North Carolina Corp. Commission,* 206 U. S. 1, 20; 51 L. ed. 933, 942, 27 S. Ct. 585, 11 Ann. Cas. 398."

As already pointed out, the Act of 1932 abolishes, in specific and unambiguous language, all obligation on the part of the Building & Loan Associations to set aside or allocate any definite segment of "receipts" from which withdrawing shareholder's investments may be discharged. Then, in what seems to have been an extra effort to insure the accomplishment of this purpose, the legislature leaves to the unregulated and uncontrolled discretion of the board of directors, not only the discharge of the duty or obligation, but the sole control, administration and the amount of funds

to be accumulated for the purpose. We quote the language of the statute:

> "Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded * * * ."

Nor is this all. By other provisions of the Act the board of directors are specifically authorized, despite the existence of a withdrawal list, to make new loans to as much as 25% of the "gross receipts"; to borrow money and thus create new corporate obligations superior to that of the withdrawing members; to pay dividends to continuing members to the amount of the entire earnings of the Association. (Sec. 56 of the Act.) The board is further authorized by Sec. 53, as follows:

> "Sec. 53 (par. 2) **Before** making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association, may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement of all repossessed property, the payment of renewal of obligations, **and the creation of cash reserves needed for the declaration of dividends.**"

Nor is this all. These corporations, through their boards of directors are further authorized by section 13 of the Act to invest their "capital, or any part thereof" in Federal, State and Municipal bonds.

Considering the foregoing derogations from his rights, and bearing in mind other provisions of the Act which make inapplicable to these corporations the laws of receivership, other sections which deny to withdrawing members any right to interest, or to inspections of books and records or a cause of action, except to enforce the provisions of the statute, and there remains to the withdrawing shareholder but an empty title. **The law has completely stripped him of every vestige of remedy to enforce recovery, not of a mere inchoate or unliquidated claim, but of his own money; it completely abrogates every form of control which he had over his own funds invested in such institution, denying to him any and all share in the profits which those very funds helped to earn, and subjects even the recovery of them to an unregulated discretion of a board of directors that he cannot so much as help to choose. If this is not a "taking," then in the name of reason, what is?**

III

Does the State's Reserved or Police Power Save the Legislation from Unconstitutionality?

It is a principle of Constitutional law, to which we fully subscribe, that the State is sovereign, and can under its inherent or reserved attribute of sovereignty denominated "police power" legislate to protect the health, morals, safety and general welfare of its people, even to the extent of impairment of Constitutional prohibitions such as have been here invoked.

This Court has numerously and definitely applied this doctrine subject always to the equally important principal that "every exercise of the police power must be reasonable," and neither "arbitrary nor discriminatory".

This Court has in the case of *Home Building & Loan Ass'n. vs. Blaisdell,* 290 U. S. 398, 78 L. ed., 413, again stated the principle, thus:

> "Undoubtedly, whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other. **This principle precludes a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them.**"

Freund, on Police Power, pages 60, 61 expresses this principle in these words:

> "Effective judicial limitations of the police power would be impossible, if the legislature were the sole judge of the necessity of the measures it enacted. The only question a Court could then ask in dealing with police legislation would be: does a condition exist which justifies any legislative action? But the maintenance of private rights under the requirements of the public welfare is a question of proportionateness of measures entirely. Liberty and property yield to the police power, but not to the point of destruction. . . . In reserving the conclusive determination of this issue to themselves, the Courts have firmly established the principle that **the duty of the reasonable exercise of the police power is a constitutional limitation on the legislature.** There are few forms of control that cannot become unreasonable by an excess of degree; and there are many cases where no other principle of limitation is discoverable than that of reasonableness. . . . The question of reasonable-

> ness usually resolves itself into this: is regulation carried to the point where it becomes prohibition, destruction or confiscation?"

In *Washington ex rel. Seattle Title Trust Co. vs. Roberge,* 278 U. S. 116, 73 L. Ed. 210, the Court held:

> "Legislatures may not under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities."

In *Nebbia vs. New York,* 291 U. S. 502, 78 L. Ed. 940, the Court again stated that whether to promote health, safety or general welfare, legislation which entrenches upon constitutional guarantees must be reasonable and not arbitrary or discriminatory.

The defendant Associations urged before the Supreme Court of Louisiana that Building and Loan Associations are businesses "impressed with a public interest," and that therefore the State can regulate them *in every detail;* that shareholders in such Associations have dedicated their investment to a public purpose and that they therefore insofar as such stockholders are concerned are without the pale of Constitutional protection.

We do not for a moment deny that Building and Loan Associations are subject to legislative regulation; we may even admit that they are affected with a public interest: for, after all, every business may be properly regulated, every industry is subject to reasonable exercise of the police power.

This Court has very recently again considered, clarified and restated the meaning of the phrases "affected with a public interest," "clothed with a public interest," "subject to a public interest," dedicated to a public interest" and

the like; and declared that none of these expressions denotes anything more than "subject to the exercise of the police power."

In the case of *Nebbia v. New York (Supra)*, the Court referring to *Munn v. Illinois*, 94 U. S. 113, 24 L. Ed. 77, said:

> "This court concluded the circumstances justified the legislation as an exercise of the governmental right to control the business in the public interest; that is, as an exercise of the police power. It is true that the court cited a statement from Lord Hale's *de Portibus Maris*, to the effect that when private property is 'affected with a public interest, it ceases to be *juris privati* only;' but the court proceeded at once to define what it understood by the expression, saying: 'Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large' (p. 126). **Thus understood, 'affected with a public interest' is the equivalent of 'subject to the exercise of the police power;' and it is plain that nothing more was intended by the expression.**"

and again:

> "It is clear that there is no closed class or category of businesses affected with a public interest, and **the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory.** *Charles Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522, 535, 67 L. ed. 1103, 1108, 43 S. Ct. 630, 27 A. L. R. 1280.

> The phrase 'affected with a public interest' can, in the nature of things, mean no more than an industry, for adequate reason, is subject to control for the public good."

The Court went on to say that under the police power the legislation must be reasonable and not be arbitrary, discriminatory, or an unnecessary interference with individual liberty.

In other words, businesses impressed with a public interest still have constitutional protection; the money invested in a Building and Loan Association (which once was considered the equivalent of funds deposited in a bank) is nevertheless property, and may not be taken without due process. Such businesses, and consequently such investments, may be regulated, but not arbitrarily and not with utter disregard for private rights.

Something more than a mere showing that the public has an interest in a measure or will benefit by it is required to justify the act as a proper exercise of the police power, especially when confronted by counteracting constitutional limitations intended for the protection of private rights. If this were not so, then the state would have it in its power to take from the miser the excess of his accumulated wealth, and distribute it among the more needy of its citizens—not by the power of taxation, which is an equal burden on us all, but by the more direct route of a "taking" under the police power. Happily for us all this is impossible under our system of government.

We do not seek nor have we the right to inquire into the wisdom or unwisdom of the legislation in question. That is the province alone of the Legislature; but we do inquire, and we have the right to do so, into whether or not there is a reasonable relation between the public welfare and the retroactive provisions of this Statute.

IV.

The legislation in question is unreasonable, unjust and discriminatory.

The provisions of this Act as gleaned from the Act itself have no such relation to public welfare as to justify the destruction, in a retroactive manner, of the private rights of the appellants. The pertinent part of the title of the Act states its general purpose to be "**. . . to codify the laws of the State with respect to the Homestead and Building and Loan Associations, and to prescribe the rights, obligations and duties of said corporations and of the members thereof.**" Thus we see it is not an emergency measure, such as was justified in the rent regulation cases, or which justified the interference of the government in disputes between railroads and labor during war times.

The right to withdraw the money invested in shares of a Building and Loan Association is the essential difference between such associations and ordinary corporations. This right is of the genius of such associations. No where in the Act of 1932 does the Legislature undertake to declare it to be against public welfare that such withdrawals be permitted. On the contrary, the genius of the institution and the public welfare of Louisiana both require the right to withdraw.

This Act of 1932 has, however left to withdrawing shareholders no means whatever to enforce their rights; this Act of 1932 has moreover placed it within the power of continuing members, unrestrained and unregulated by any judicial process, to use appellants' property indefinitely and without compensation.

The Supreme Court of Louisiana has squarely faced the

problem. It has admitted that the Louisiana legislation in question deprives the appellants of valuable contract and property rights, but the majority opinion after lengthy citation of the Gold Clause cases declares that:

> "The constitutional prohibition against legislation 'impairing the obligation of contracts' does not protect contracts 'which deal with a subject which lies within the control of Congress' or the Legislature."

The propositions of law enunciated and applied in the Gold Clause cases are well established; and this Court, we submit, has in no wise departed in the Gold Clause cases from, but has emphasized, the fundamental principle that any attempted exercise of the reserved police power of the State, as it affects existing contract obligations and rights of property must bear a reasonable relation to a legitimate end, and must be reasonable and not arbitrary or capricious.

Pretermitting all other arguments, if the legislation in question does not bear reasonable relation to the public welfare, or is arbitrary or discriminatory, then if it impairs contract obligations or takes property without due process, it is unconstitutional.

Worthen vs. Thomas, 282 U. S. 426, 78 L. Ed. 1344.
Home Bldg. & Loan Ass'n. vs. Blaisdell, 290 U. S. 398, 78 L. Ed. 413.

The Supreme Court of Louisiana in the opinion has said that the legislation in question is not arbitrary or capricious and bears reasonable relation to a legitimate end.

This is the crux of the entire case. If the Court be correct here, there can be but one conclusion. But with due

respect, we say that the Court has fallen into grievous error in its appreciation of the relationship between provisions of the sections of the Homestead law of 1932 under discussion and the object sought to be attained by the Legislature.

The Court said (R. 36 and 45) that the object is

> "saving the building and loan associations from liquidation and of reviving their business, and of thereby benefiting all of the shareholders as a class, and the public generally."

Assuming this to be the object sought to be attained, is there reasonable relation between that end and the provisions of the Act?

Let us take section 54 which provides the "stagger system" of withdrawals. This section provides that when a withdrawing shareholder reaches the top of the list, instead of being paid in full, he is paid 25% and then goes to the foot of the list, to again come up and so on. There is *no reasonableness* whatever in these provisions of the Act with respect to saving the Associations from liquidation or reviving their business, because it is a very simple mathematical proposition that in a given space of time they will *pay out exactly the same amount* under the stagger system as they would if they paid 100% to each withdrawing member as he reached the top of the list.

No, may it please the Court, all that the stagger system of section 54 does is to take 75% of what was already vested in me and pay it to somebody else. No reasonable relationship here but arbitrary redistribution of wealth!

There never has been a decision of the Supreme Court of the United States that remotely suggests the constitutionality of a statute enacted under the guise of saving an industry from destruction,—the real and only possible purpose and effect of which is to destroy contract obligations and divest and take vested property rights in order that other private citizens may have, use and enjoy those rights.

When we examine sections 53 and 56 we find a more unreasonable and intolerable situation.

Instead of the provisions of the Act of 1916 and the contract between appellants and the Homestead Associations that at least 50% of net receipts must be allocated to the payment of withdrawals, these sections vest in the board of directors of each Association the absolute and unregulated discretion to allocate nothing whatever to payment of withdrawals and at the same time the uncontrolled and absolute discretion to set up and create reserves of every kind and to pay to continuing shareholders, including themselves, unlimited dividends and even to create cash reserves for future dividends!

Now, it is to be borne in mind that no standard is fixed by the Legislature by which the discretion of the directors is to be regulated. The discretion is unregulated.

This is not exercise of police power by a Legislature, it is delegation of police power by the Legislature to a private board.

Not only that! The Legislature by this very Act stamps with its approval the payment in full of withdrawals. In

fact, the opinion of the Supreme Court of Louisiana declares the object sought to be attained by the statute in question is the preservation of this institution, whose genius, whose distinguishing characteristic, differentiating it from every other type of corporation, is this right of the shareholder to be repaid his investment on demand.

Therefore, we may assert without fear of contradiction that the Legislature has not declared or determined that withdrawals should be prevented, curtailed or obstructed as inconsistent with public welfare. The Legislature has no where declared or provided that withdrawals should be regulated for any given time or under any set of circumstances.

The Legislature merely vests in a board of directors the absolute and unregulated discretion to prohibit all withdrawals indefinitely, by allocating nothing with which to pay them, and at the same time to continue to use the original money invested by the withdrawing shareholder without paying him any dividends whatever, and while paying to continuing members (which necessarily includes each director) whatever dividends the board may choose to declare.

This legislation as contained in Sections 53 and 56 is unconstitutional because police power must be exercised by the sovereign through the law making body and cannot be delegated to private persons or private boards, especially unguided by any prescribed norm or standard, and more particularly when such private boards are possessed of rights and privileges which are augmented and furthered to the same degree as they by their actions derogate from the rights and privileges of others.

This Court has at least twice declared unconstitutional such delegations of power.

In *Eubank v. Richmond,* 226 U. S. 137, 57 L. Ed. 156, the Court had before it a situation very similar to the instant case.

In that case an ordinance of the City of Richmond, Va., enacted under authority of a legislative act of that State, provided that whenever two-thirds of the property owners fronting on a street petitioned the Commission on Streets to fix the building line along the street, the Commission was required to fix said line within limits of 5 to 30 feet from the street line. Eubank, the plaintiff, had, before passage of the ordinance, obtained a permit to erect a dwelling and had ordered material for its construction, although actual building had not commenced, when he was notified that the bay-window of his proposed house projected over the line, thus fixed, by three feet. He was ordered to revise his plans accordingly. Suit was filed attacking the constitutionality of the statute and ordinance, on the ground that it operated to deprive him of property "without due process of law." The Supreme Court of Virginia upheld the statute and ordinance, but on writ of error to the United States Supreme Court, the action of the state court was reversed, the Court saying:

> "It (the statute and ordinance) leaves no discretion in the committee on streets as to whether the street line shall or shall not be established in a given case. The action of the committee is determined by two-thirds of the property owners. In other words, part of the property owners fronting on the block determine the extent of use that other owners shall make of their lots, and against the restriction they are impotent. This we emphasize. **One set of owners determines not only the extent**

> of use, but the kind of use which another set of owners may make of their property. In what way is the public safety, convenience, or welfare served by conferring such power? The statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, creates no standard by which the power thus given is to be exercised; in other words the property holders who desire and have the authority to establish the line may do so solely for their own interest, or even capriciously. . . . The only discretion, we have seen, which exists in the street committee or in the committee of public safety, is in the location of the line between 5 and 30 feet. It is hard to understand how public comfort or convenience, much less public health can be promoted by a line which may be so variously disposed.
>
> "We are testing the ordinance by its extreme possibilities to show how in its tendency and instances it enables the convenience or purpose of one set of property owners to control the property right of others. . . . One person, having a two-thirds ownership of a block may have that power against a number having a less collective ownership. If it be said that in the instant case there is no such condition presented, we answer that there is control of the property of plaintiff in error by other owners of property, exercised under the ordinance. This, as we have said, is the vice of the ordinance, and makes it, we think, an unreasonable exercise of the police power."

We submit the control granted to the board of directors of the defendant associations over the property and rights of appellants by the provisions of the 1932 Act are no less

offensive to the provisions of the Federal Constitution than in the Eubank case. They constitute a "taking", and are not justifiable under the "police power".

In the case of *Washington, ex rel Seattle Title Trust Co. v. Roberge,* 278 U. S. 116, 73 L. Ed. 210, the Court again applied this principle.

The City of Seattle in 1923 passed a comprehensive zoning ordinance dividing the city into six "use" districts, and provided that no building might be erected for any purpose other than that permitted in the district in which the site is located.

Since 1914 the Seattle Title Trust Co. as trustee owned and maintained in one of these "use" districts a philanthropic home for aged poor. The trustee purposed to replace the building with a larger and more modern building on the same site, which would have been in no sense a nuisance.

The site was in the "first residence district," where dwellings, schools, churches, banks, boarding houses, etc., were permitted. In 1925 an amendment to the ordinance provided that "a philanthropic home for children or old people shall be permitted in first residence district when the written consent shall have been obtained of the owners of two-thirds of the property within 400 feet of the building."

The trustee, when he was refused a permit without such written consent, resisted the ordinance as invalid, as repugnant to the due process clause.

The Court held the ordinance unconstitutional, saying:

> "The right of the trustee to devote its land to any legitimate use is property within the protection of the Constitution. The facts disclosed by the record make it clear that the exclusion of the new

home from the first district is not indispensable to the general zoning plan. **And there is no legislative determination that the proposed building and use would be inconsistent with public health, safety, morals or general welfare. The enactment itself plainly implies the contrary. The grant of permission for such building and use, although purporting to be subject to such consents, shows that the legislative body found that the construction and maintenance of the new home was in harmony with the public interest and with the general scope and plan of the zoning ordinance.** The section purports to give the owners of less than one-half the land within 400 feet of the proposed building authority—uncontrolled by any standard or rule prescribed by legislative action—to prevent the trustee from using its land for the proposed home. The superintendent is bound by the decision or inaction of such owners. **There is no provision for review under the ordinance; their failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily, and may subject the trustee to their will or caprice.** *Yick Wo v. Hopkins,* 118 U. S. 356, 366, 368, 30 L. ed. 220, 225, 226, 6 Sup. Ct. Rep. 1064. The delegation of power so attempted is repugnant to the due process clause of the 14th Amendment. *Eubank v. Richmond,* 226 U.S. 137, 143, 57 L. ed. 156, 158, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76, Ann. Cas. 1914 B, 192; *Browning v. Hooper,* 269 U. S. 396, 70 L. ed. 330, 46 Sup. Ct. Rep. 141.

We earnestly submit that in Act 140 of 1932 there is no legislative determination that withdrawals by shareholders would be inconsistent with public welfare. Perhaps the legislature might have for a limited time forbidden withdrawals, or conditionally forbidden them during the continuance of certain conditions. But they did no such thing. They

permit, they sanction withdrawals, and so indicate plainly that they find the withdrawal of shares in harmony with the public interest.

After doing this, the legislature takes away all power of the Courts to compel allocation of any portion of net receipts to a fund to accomplish withdrawal; and moreover, in delegating the unregulated power to the numerous boards of directors of the Homesteads to determine the amount or segment of revenues, if any at all, to be allocated to withdrawals, the legislature has placed in the hands of continuing members of the Associations the power to use for their own aggrandisement the property and funds of withdrawing members without compensation and indefinitely.

Finally, upon this phase of the case, we would refer to the long line of decisions in which statutes of this sort, which have sought under the guise of police power to take property rights from, or to impair the contract obligations of, one person or class of persons for the benefit of another person or class of persons have repeatedly been held to be unconstitutional.

The Minnesota Moratorium case *(Home Building & Loan Ass'n. v. Blaisdell,* 290 U. S. 398) cites and discusses them all, from *Bronson v. Kinzie,* 1 Howard 311, on down to the present time; and points out that the protection of one class of persons at the expense of another class may only be justified as emergency legislation if reasonably conditioned. If the legislation is temporary and consideration is allowed for the temporary taking of property, the legislation may be constitutional.

V.

The statute in question cannot be justified as emergency legislation.

It is finally submitted that the Louisiana statute cannot be justified as emergency legislation. The title to the Act indicates permanent codification, and the statute is in no way limited in operation to a definite term; nor does the Act contain any provision apposite to emergency relief.

This Court in two rather recent cases has carefully considered emergency legislation, and has enumerated clear principles with respect thereto.

In *Worthen vs. Thomas*, 292 U. S. 426, 78 L. Ed. 1344, this Court held unconstitutional a statute of Arkansas which, as emergency legislation, undertook to exempt from liability for debt the proceeds of any insurance policy inuring to a resident of Arkansas.

We quote from the body of the opinion in that case:

> "The Legislature sought to justify the exemption by reference to the emergency which was found to exist. **But the legislation was not limited to the emergency and set up no conditions apposite to emergency relief.**
>
> "We held in *Home Bldg. & L. Asso. v. Blaisdell, supra* (290 U. S. pp. 434, *et seq., ante*, 255, 54 S. Ct. 231, 88 A. L. R. 1481), that the constitutional prohibition against the impairment of the obligation of contracts did not make it impossible for the State in the exercise of its essential reserved power, to protect the vital interests of its people. The exercise of that reserved power has repeatedly been sustained by this Court as against a literalism in the construction of the contract clause which would

make it destructive of the public interest by depriving the State of its prerogative of self-protection. We held that this reserved protective power extended not only to legislation to safeguard the public health, public safety, and public morals, and to prevent injurious practices in business subject to legislative regulation, despite interference with existing contracts—an exercise of the State's necessary authority which has had frequent illustration—but also to those extraordinary conditions in which a public disaster calls for temporary relief. We said that the constitutional prohibition should not be so construed as to prevent limited and temporary interpositions with respect to the enforcement of contracts if made necessary by a great public calamity such as fire, flood, or earthquake, and that the State's protective power could not be said to be non-existent when the urgent public need demanding relief was produced by other and economic causes. **But we also held that this essential reserved power of the State must be construed in harmony with the fair intent of the constitutional limitation, and that this principle precluded a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them. We held that when the exercise of the reserved power of the State, in order to meet public need because of a pressing public disaster, relates to the enforcement of existing contracts, that action must be limited by reasonable conditions appropriate to the emergency.** This is but the application of the familiar principle that the relief afforded must have reasonable relation to the legitimate end to which the State is entitled to direct its legislation. Accordingly, in the Blaisdell Case we sustained the Minnesota mortgage moratorium law in the light of the temporary and conditional relief which the legislation granted. We found that relief to be reasonable, from the standpoint of both

mortgagor and mortgagee, and to be limited to the exigency to which the legislation was addressed.

"In the instant case, the relief sought to be afforded is neither temporary nor conditional. In placing insurance moneys beyond the reach of existing creditors, the Act contains no limitations as to time, amount, circumstances, or need. We find the legislation, as here applied, to be a clear violation of the constitutional restriction."

In the instant case, are appellants' rights only temporarily postponed; do we find the Act limited as to duration? We not only do not, but we find that the statute purports to codify in a permanent fashion. Does the Act condition the derogation of appellants' rights so as to make it reasonable and fair instead of arbitrary and unjust? It not only does not, but the statute in forbidding the Association to pay dividends to withdrawing members, takes away a power the Association might have exercised to ameliorate the situation which the 1932 statute created.

CONCLUSION

We again suggest that legislation may be constitutional in its prospective application, and unconstitutional as applied retroactively to existing contract obligations and vested rights. We seek to have unconstitutionality declared only as the Act of 1932 applies to appellants.

We submit that the sections of Act 140 of 1932 denounced by us impair the essential obligations of a contract between appellants and the associations, and which obligations became fixed, vested and mandatory when appellants gave notice of withdrawal; that such legislation impaired appellants' contract rights and divested their property without due process.

We do not dispute that the business of Building and Loan Associations may be regulated under the State's reserved police power, but we insist that all such regulation when it affects contract obligations and property rights must be reasonable—the regulation must be such as has reasonable relation to the legitimate end in view; must be in harmony with the fair intent of the constitutional limitation.

None such here! But arbitrary impairment of contract and divesture of property rights without process; unjust discrimination against one shareholder in favor of other shareholders. No temporary moratorium as in Minnesota, nor fixing for a limited time of prices as in the Nebbia case; but permanent, retroactive, confiscatory and discriminatory legislation which has not been and cannot be justified.

It is submitted that the decree of the Supreme Court of Louisiana appealed from should be reversed, and sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana declared unconstitutional, and the decree of the Lousiana District Court reinstated.

ALEX W. SWORDS,
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Counsel for Appellants.

APPENDIX

BY-LAWS.

1. Acme Homestead Association (Record 287, page 18.)

Section 6. Withdrawals.—Full Paid Stock may be withdrawn at any time, by giving notice, in writing, to the Association through its Secretary, which notice shall be registered by him in order received, and in the same manner as notices for withdrawals of Installment shares, and shall be paid for in the order received, out of any unappropriated money in the treasury; provided that not more than one-half of the monthly receipts of the Association shall be used in the payment of withdrawals. Dividends shall cease from the date of the Notice of withdrawal. The Shareholder shall receive the face value of the stock, together with all dividends declared thereon, which shall not have been previously withdrawn, less a pro-rata share of losses, if any, in excess of the amount in the Contingent fund of the Association.

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2. Thrift Homestead Association (Record 288, page 18.)

(4) Shareholders shall have the right to withdraw from the association the amount paid in, together with the actual proportion of loss, if any, upon filing written notice of withdrawal, which shall be registered in the order received, and such withdrawals shall be paid in the order registered, but said association shall not be compelled to devote more than one-half the monthly receipts for the purpose of paying withdrawals, but the board may, in its discretion, use more than one-half the monthly receipts for the purpose of paying the matured or withdrawn shares.

3. Conservative Homestead Association (Record 289, page 18.)

Charter, Art. IV:

Shareholders shall have the right to withdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than one-half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate.

By-Laws, Sec. IV:

Paid-Up Shares.—Paid-up shares may be issued by the President upon payment of same in full, in cash, at the time of issuance. This stock shall begin to draw dividends from the date of issue.

Paid-up stock shall be issued subject to the following terms and conditions:

1. Dividends are payable in cash semi-annually.

2. This stock may be withdrawn at any time by giving written notice to the Association, and such notice of withdrawal shall be registered in the order received in the same manner as withdrawals of current shares and shall be paid in order out of any unappropriated money in the treasury, provided that not more than half the monthly receipts of the Association shall be used in pay-

ment of withdrawals. The holder will receive the face value of the stock, together with all dividends declared thereon which have not been previously withdrawn, less a pro rata share of losses, if any, in excess of the amount in the contingent fund of the Association.

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4. Union Homestead Association (Record 290, page 18.)

4. Members not indebted to the Association may withdraw all or any part of the cash value of their unpledged shares by giving notice in writing, and the liability to pay dues and the right to participation in profits shall cease with the notice. If the withdrawal be total, the member shall receive all installments paid, and all dividends credited thereto, less any unpaid charges and a pro rata share of the losses, if any, in excess of the amount in the contingent loss fund. Members making partial withdrawals shall forfeit all share in the earnings since the last dividend on the amount so withdrawn. Notices of withdrawal shall be registered and numbered in the order of their filing, and shall be liquidated in rotation as registered upon the return of the certificate of stock and pass book if the withdrawal be total, or on the giving of proper receipt if the withdrawal be partial, out of the first unappropriated money in the treasury; provided that not more than one-half of the monthly receipts shall ever be used for the liquidation of withdrawn or matured stock unless there should be an accumulation of funds that cannot be loaned in the ordinary course of business.

Full paid and matured shares may be withdrawn in the same manner as installment shares, but no fractional parts of shares can be withdrawn.

Section 7 of Act 120 of 1902 (Louisiana Laws 1902, page 195) **as amended by Act 280 of 1916** (Louisiana Laws 1916, page 568).

"Section 7. Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid." * * *

Act 140 of 1932 (Louisiana Laws 1932, page 454). (Sections 53, 54, 55 and 56).

"**Section 53.** Members may withdraw full paid withdrawable shares, or part or all of the sum paid in on account of their unpledged installment or other shares, by filing notice in writing at the office of the Association, and if the funds therefor are available as hereinafter set forth, shall receive the amount so withdrawn, together with all dividends declared thereon or earnings allocated thereto previous to the date of the filing of said application with the association, or if it be payments on account of shares, all dividends thereon declared and payable prior to date of said filing; less such percentage of allocated earnings as may be retained on account of withdrawing or surrendering serial stock before its maturity in accordance with any charter or by-law and less any unpaid charges and a pro rata share of any losses, prior to the date of the filing of said application, in excess of the amount in the Contingent Loss Account. Whenever an allowance is made to members on the withdrawal list as authorized by Section 55 of the present statute, any withdrawing member, who accepts said allowance, must bear his proportion of all losses and charges up to the time of the final payment to him in respect of his said application. Whenever the Supervisor takes charge of any association, or in the event of merger, consolidation or liquidation, the withdrawal list shall be cancelled.

"Before making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement

of all repossessed property, the payment or renewal of obligations, and the creation of cash reserves needed for the declaration of dividends.

"**Section 54.** Notices of withdrawal shall be made in writing and shall be registered in the order of their receipt, and whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal, applications for withdrawal shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than five hundred dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than five hundred dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant (except as hereinafter set forth) until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations when the present statute goes into effect; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in the present statute. In addition to the above, the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire inter-

est in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list. Provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. Such applications should be in writing and kept on file in the association's office. The board of directors shall have full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or otherwise improper transfer of shares in order to appear more than once on the withdrawal list, and all rules thus made shall be binding on the members of the association. Whenever the amount of withdrawals exceeds sixty per cent of the accumulated capital of any association, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro-rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued.

"At their maturities, installment shares which have a fixed maturity and on account of which no installments have been delinquent for more than one year for a period of time exceeding seven years, shall be preferred over all shares on the withdrawal list; and, at such maturities, no other shares on the withdrawal list shall be cashed until said installment shares have been paid.

"**Section 55.** A member who has served notice of his intention to withdraw remains a shareholder, but shall have the status of, and be classified as, a withdrawing member; and his rights and privileges are prescribed, limited and defined exclusively by the provisions and restrictions of the present statute. Except as stated in Section 53, no liabilities or losses as of a date subsequent to the time of the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and from the date of said application and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as hereinafter set forth, to any benefit on his shares beyond the collection of the face value thereof, nor to allowance or dividend in the distribution of the accumulated or current profits or earnings. No suit shall be instituted by a withdrawing shareholder against an association, its officers or representatives, except for a violation of the provisions of the present Statute, or to enforce compliance with said provisions. For such purpose and not otherwise, such a withdrawing shareholder shall be entitled, under such reasonable rules as the association may prescribe, to inspect the books and records of the association.

"However, in its discretion, the board of directors may, from time to time, prescribe and grant and order the payment of an allowance on the amount of unpaid withdrawals under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list, or otherwise, as the board may determine and prescribe; but the rate of allowance which may be thus paid shall never exceed sixty per cent (60%) of the rate of dividend currently and actually paid in cash on the shares of continuing members; and such allowance may be discontinued by the board in its discretion, at any time or under any condi-

tions, especially without affecting the right to continue to pay dividends on the shares of continuing members.

"**Section 56.** The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares.

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."